No. 2812

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

JOSEPH B. KATZ,
Appellant,

vs.

COMMISSIONER OF IMMIGRATION at the Port of San Francisco, California,
Appellee.

GOVERNMENT'S BRIEF

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division

JOHN W. PRESTON,
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STATEMENT OF CASE.

The facts governing the deportation proceedings of Joseph Katz, the appellant in this case, are very similar to those set forth in the Government's brief covering the case *of Samuel W. Backus, et al.,* vs. *Harry Katz,* now on appeal in this Court, but while there is a similarity in the facts governing both cases, it is also true in this case that all of the evidence considered was not the same as the evidence reviewed in the case of Harry Katz, the brother to appellant.

Joseph Katz was born in Poland and left Liverpool, England, October 9, 1906, for New York City; from New York he came to San Francisco, arriving

about April 1907. About the year 1909 he went to Colfax and remained there until the time of his arrest in 1914. On February 26, 1914, a warrant was issued by the Secretary of Labor for the arrest of Joseph Katz, charging:

> "That the said Joseph Katz is unlawfully within the United States in that he has been found receiving, sharing in, or deriving benefits from the earnings of a prostitute or prostitutes".

When the appellant, Joseph Katz, was arrested on the said warrant, he petitioned for a writ of habeas corpus. All of the evidence and proceedings set forth in the original record which is marked Exhibit "A" and made a part of the appeal record in this case, was made a part of the petition in the lower court, and was considered by said court as a part of the petition for a writ of habeas corpus, upon the hearing of the Government's demurrer. So the lower court took into consideration all of the pleadings, evidence and other documents now before this Court when it sustained the Government's demurrer to said petition.

ASSIGNMENTS OF ERROR.

Counsel for appellant, on page 27 of his brief, sets forth the following assignments of error, as follows:

> "First: There is an absolute insufficiency of any alleged evidence, either in fact or in law, to support the warrant of deportation against Joseph B. Katz;

Second: That 'information and belief', hearsay, opinions, conclusions, surmises or conjectures, or anything not recognized by the established rules of law as competent and legitimate evidence, can not be made the basis of a warrant of deportation;

Third: Unfairness of hearing in many particulars."

ARGUMENT.

The foregoing assignments bring the Government to a consideration of the same points that had to be considered in its brief in the appeal of appellant's brother, Harry Katz, namely: if the proceedings of the Immigration officials were not manifestly unfair or such as to prevent a fair investigation or amounted to a manifest abuse of discretion, they were not open to attack.

Low Wah Suey vs. *Backus,* 225 U. S. 460,
U. S. vs. *Ju Toy,* 198 U. S. 253; 49 L. Ed. 1040,
Chin You vs. *U. S.,* 208 U. S. 852,
Tang Tun vs. *Edsell,* 223 U. S. 673.

The findings of the Secretary of Labor are final and conclusive.

Ekiu vs. *U. S.,* 142 U. S. 651,
Lee Lung vs. *Patterson,* 186 U. S. 170,
The Japanese Immigrant case 189 U. S., page 86,
Tang Tun vs. *Edsell,* 223 U. S. 673,

Low Wah Suey vs. *Backus,* 225 U. S. 460,

U. S. vs. *Ju Toy,* 198 U. S. 253,

Zakonaite vs. *Wolf,* 226 U. S. 272,

Chin You vs. *U. S.* 208, U. S. 8,

Healy vs. *Backus,* 221 Fed. 358.

In *Lee Lung* vs. *Patterson,* supra, the Court said:

"It was decided in Nishimura Ekiu's case that Congress might intrust to an executive officer the final determination of the facts upon which an alien's right to land in the United States was made to depend, and that if it did so, his order was due process of law, and no other tribunal, unless expressly authorized by law to do so, was at liberty to reexamine the evidence on which he acted or to controvert its sufficiency. This doctrine was affirmed in *Lem Moon Sing* vs. *U. S.*, 158 U. S. 538, 39 L. Ed. 1082; 15 Sup. Ct. Rep. 967 and at the present term in *Fok Young Yo* vs. *U. S.*, 185 U. S. 306."

In *Low Wah Suey* vs. *Backus,* the Court said:

"A series of decisions in this court has settled that such hearings before executive officers may be made conclusive when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made upon such hearings, it must be shown that the proceedings were manifestly unfair; that the action of the executive officers was such as to prevent a fair investigation, or that there was a

manifest abuse of the discretion committed to them by the statute. In other cases the order of the executive officers within the authority of the statute is final.

U. S. vs. *Ju Toy*, 198 U. S. 253,
Chin Yow vs. *U. S.*, 208 U. S. 8,
Tang Tun vs. *Edsell*, 223 U. S. 673."

A careful reading of the brief submitted on behalf of said appellant does not change the Government's opinion in that the matters to be considered in this appeal are practically the same as those considered in the Harry Katz case. It is conceded by appellant herein and by his counsel that he was the owner of the house in which Nellie White and other women dwelt; that he received rental from this building during the time that the said Nellie White and the other women occupied the same.

Counsel representing appellant indicates in his brief that the only question to be determined herein is whether or not a party owning a building and receiving the rental from a prostitute who occupies the same, subjects himself to deportation proceedings.

While this no doubt is one of the principal questions involved, yet the Government desires to call attention to the fact that there was much other evidence introduced in this case which was considered by the Secretary of Labor and the other Immigration officials when this case was before them and that all of this evidence was before the lower Court at the time

when it sustained the Government's demurrer to the petition for a writ of habeas corpus interposed on behalf of the appellant.

So we are again confronted with this question. Is there sufficient evidence in this case to justify the Secretary of Labor to order appellant deported?

In order to get clearly before the Court just what evidence was considered by the Secretary of Labor and also by the lower Court, the Government will now call attention to what it considers the most material evidence introduced, and will therefore now set forth only a portion of the affidavits and other matters which appear in the original record now on file and which were considered by the said Secretary of Labor and the said lower Court.

Attention is first directed to an affidavit made by Robert A. Peers, found on page 76 of the record of the Bureau of Immigration, which is marked "Exhibit A", and is on file and to be considered in this case. The affidavit is as follows:

"State of California
County of Placer } ss.

Robert A. Peers, of lawful age, being first duly sworn, deposes and says:

That he is now, and at all times herein mentioned has been a citizen of Colfax, Placer County, State of California, and has been a practicing physician therein; that he has been acquainted with Harry Katz, also known as Dr. H. H. Katz, the alien described under depart-

ment Warrant No. 5377L202, dated March 18, 1914, for a period of five years last past; that he knows the property described as lots 8 and 9 of Block E on Church St. and affiant avers that he was one of several citizens who petitioned the then District Attorney of Placer County, Charles Tuttle, to have the nuisance, consisting of a house of prostitution run by said Harry Katz on the lots 8 and 9, aforesaid, abated. The affiant also avers that said Harry Katz was arrested for conducting a house of prostitution at these premises during the year 1909. The affiant avers that it was a well-known fact that Harry Katz was arrested in the year 1909, because he was managing a house of prostitution and that he was brought before Justice of the Peace Kuenzley in an effort to close said house of prostitution. The affiant also avers that since that time the two brothers, Harry Katz and Joseph Katz, have conducted a house of prostitution on the property described as lot 1, Block 2, additional survey of the town of Colfax and it is a well-known fact in Colfax that the Katz Bros. were interested in the management of this house of prostitution, over which Nellie White, a notorious prostitute presided as madam. The affiant avers that he has never heard these things denied until the arrest of Joseph and Harry Katz in 1914. The affiant further avers that he has known Joseph Katz for a period of three years last past. The affiant further avers that he has frequently heard the property on lot 1, Block 2, aforesaid, described as the 'Katz house' and as 'Katz whore-house'. The affiant further avers that Harry Katz made frequent visits to

Colfax previous to his arrest and that it was generally understood by the people of Colfax that such visits were because of his interest in the management of the house of prostitution where Nellie White presided as madam.

(Sgd.) ROBERT A. PEERS, M. D.

Subscribed and sworn to before me this 10th day of August 1914.

(Sgd.) MORRIS LOBNER,
Notary Public in and for the County of Placer, State of California."

On page 77 of said original record, there is also an affidavit of Lucy F. Peers, similar to that offered by the said Robert A. Peers. The affidavit reads as follows:

"State of California
County of Placer } ss.

Lucy F. Peers being duly sworn deposes and says: She is now and during all times herein mentioned was a resident of the City of Colfax, Placer County, State of California. That in August 1913 the affiant in company with Jeannie K. Lobner called upon Geo. H. Hamilton, then District Attorney of Placer County, and asked him to abolish the house of prostitution run by H. H. Katz and Joseph Katz, situated at the north entrance to Colfax.

That said District Attorney, Geo. W. Hamilton, replied that he knew the house mentioned, that H. H. Katz was a personal friend and client of his, that he (Hamilton) defended H. H. Katz

on a previous occasion in 1910 when accused of conducting a house of prostitution at the west entrance to Colfax, that he (Hamilton) knew more about this place than the complainants, that he (Hamilton) knew the character of this house at the north entrance to Colfax, that it was generally known that the Katz Brothers were associated with the house, and that any one who tried to deny it would be a fool, that he (Hamilton) had influence with H. H. Katz and that he could go up to Colfax that very afternoon and persuade H. H. Katz that he had conducted the place long enough, that it was now time to quit the business; that affiant and Jeannie K. Lobner then and there asked H. H. Katz's former attorney, Mr. Geo. W. Hamilton, then District Attorney of Placer County, to do as he said he had the power to do. Said Hamilton thereupon refused unless a warrant was sworn to and case brought to trial.

(Sgd.) LUCY F. PEERS

Subscribed and sworn to before me this 31st day of July, 1914.

MORRIS LOBNER,
Notary Public for Placer County."

On page 78 of said original record there appears an affidavit of Jeannie K. Lobner as follows:

"State of California
County of Placer } ss.

Jeannie K. Lobner being duly sworn deposes and says: She is now and during all times herein mentioned was a resident of the City of Colfax, Placer County, California, that in August 1913

the affiant in company with Lucy F. Peers called upon Geo. W. Hamilton, then District Attorney of Placer County, and asked him to abolish the house of prostitution run by H. H. Katz, situated at the north entrance to Colfax.

The said District Attorney, Geo. W. Hamilton, replied that he knew the house mentioned, that H. H. Katz was a personal friend and client of his, that he (Hamilton) defended H. H. Katz on a previous occasion in 1910 when accused of conducting a house of prostitution at the west entrance to Colfax, that he (Hamilton) knew more about this place than the complainants, that he (Hamilton) knew the character of this house at the north entrance to Colfax, that it was generally known that the Katz Brothers were associated with the house, and that any one who tried to deny it was a fool, that he (Hamilton) had influence with H. H. Katz, that he could go up to Colfax that very afternoon and persuade H. H. Katz that he had conducted the house long enough, that it was now time to quit the business, that affiant and Lucy F. Peers then and there asked H. H. Katz's former attorney, Mr. Geo. W. Hamilton, then District Attorney of Placer County to do as he said he had the power to do. Said Hamilton thereupon refused unless a warrant was sworn to and the case brought to trial.

(Sgd.) JEANNIE K. LOBNER.

Subscribed and sworn to before me this 31st day of July, 1913.

MORRIS LOBNER,
Notary Public in and for the
Placer County, Calif."

Also affidavits of Minnie G. Williams beginning on pages 79 and 82 of said record, as follows:

"State of California, } ss.
County of Placer. }

Minnie G. Williams, being duly sworn deposes and says: That she is a citizen and has been for the past twenty years a citizen of the City of Colfax, California. To the ridiculing of the counsel for the defense of the affidavits presented by members of the Committee of Fifteen and others, the affiant makes reply as follows:

The counsel for the defense avers again and again that the affidavits of a goodly number of respectable citizens should be given no credence, 'in the face of the denial of Dr. Katz'. Each and every person making affidavit to the disreputable character of Dr. Katz, is a person of irreproachable character, a person of noted veracity. Is it reasonable to suppose that these people would be guilty of registering such appalling accusations against any individual unless they were driven to it by good and sufficient reasons? Any one of the accusers of Dr. Katz would lose a hand rather than besmirch the character of an innocent person. The affiant avers that the denials of a man of the character of Dr. Katz should be given no credence in the face of the sworn statements of so many upright citizens. Dr. Katz is a menace to our community, a menace to any community wherein he resides, and the removal of this menace is the only motive that has prompted the institution of proceedings against him. Dr. Katz

and his associates have had ample warning, have purposely been given ample time, in order that they might withdraw peaceably. Dr. Katz was not ignorant of the fact that he was conducting a business in direct violation of the laws of California, but he chose to defy the laws of California, and it is the business of the State to uphold its laws.

The women composing the organization known as the Committee of Fifteen are not suffragettes, are not militants, are not agitators. They are teachers, business women, home-loving women, women on whom rests no stain, women of modesty, refinement and culture. These women realize the danger threatening their homes, threatening all the Colfax homes, and it is this that prompted them to come out into the public glare and fight. Women that will not fight for their homes and loved ones are unworthy the name of women. When the laws of the State of California are so drastic against the crime of prostitution, the plaintiffs in this case can see no reason for permitting the debauchery of the young people of Colfax in order that the Katz Brothers may be enabled to pick up easy money by exploiting the shame of women.

The Counsel for the defense avers that the affidavits of the complainants should be given no credence as they are based on information and belief. Information and belief is all that is required by law. The people opposed to the crime of prostitution are in the habit of keeping as far away from brothels as possible and therefore could not testify to occurrences from

actual experience. The people that frequent brothels, and who could give damaging evidence if they would, will not do so. As no man would be forced to incriminate himself, and as the law recognizes the fact that it would be almost impossible to get actual evidence, it is very plainly stated in the law that common repute is all that is necessary for incriminating in this particular form of crime.

The men who have made affidavits to the good character of Harry Katz and Joe Katz are not men with high moral standards of morality. They are of the class that thinks the sowing of wild oats is a necessity, that manliness and libertinism are synonymous terms. The most of them are interested directly or indirectly in the liquor business. They would not be held up as examples for the sons of the complainants to emulate.

The affiant further deposes and says that every affidavit offered in the accusation of Katz Brothers is absolutely relevant, material and pertaining to the case. Considerable of the evidence in the affidavits was presented for the purpose of giving the lie to the testimony of the Katz Brothers, which it did. If the Katz Brothers would swear falsely to a part of the testimony there is no reason for believing any part of their testimony.

The Katz's stated they had no knowledge of the character of the inmates occupying their house at the west entrance to town. The affidavits of C. W. Hanson shows that Harry Katz was brought to trial because of his ownership

of this disorderly house, and because of the nuisance it was to the neighborhood. It is quite evident that there was no feeling of animosity or spite, when the complainants allowed the case to be dismissed upon Harry Katz promising to never again attempt to allow the house to be used for immoral purposes. All this can be further verified by the court records. All of which proves beyond question that the testimony of the Katz Brothers and the affidavits of D. A. Russell and P. W. Crider are absolutely false. The statement of Harry Katz, that he could not remove a fence because a carpenter had put it up is worthy of an imbecile. We expected the counsel for the defense would have sense enough to avoid calling attention to so silly a statement.

Harry Katz did not, as far as we know make any further attempt to conduct a brothel within his house at the west entrance to town, but he, as soon as possible, got possession of a house and lot at the north entrance to town, and proceeded to establish his prostitutes there and continue his nefarious business. That Harry Katz has not lived here continuously four years is irrelevant, immaterial and not pertaining to the case. He was interested enough here to leave his business in Stockton and come to Colfax several days each month as shown by the former affidavit. The affiant further states and wishes to emphasize that during the visits of Harry Katz to Colfax, that beyond any shadow of doubt, he resided with woman, Nellie White, whom he claims was merely a tenant, and of whose character he knew nothing. Harry Katz

testifies that he had nothing to do with the house at the north entrance to town. The affiant showed in her former affidavit that Harry Katz paid part of the bills, and that the bills paid by Joe Katz were first submitted to Harry Katz which shows conclusively that Harry Katz had a great deal to do with the aforesaid house, and reveals the falseness of the testimony of both Harry Katz and Joe Katz. The plaintiffs in this case, who represent and are acting for the moral element of Colfax appeal to the State of California, appeal to the Federal Government to be relieved of the presence of these arch fiends. We pray that unscrupulous lawyers may not be permitted to juggle with the laws of the State and Nation—we pray that justice may be allowed to prevail. In witness whereof the aforesaid affiant has hereunto set her hand and seal.

(Sgd.) MINNIE G. WILLIAMS,

Subscribed and sworn to before me this 29th day of July, 1914.

(Sgd.) MORRIS LOBNER,
Notary Public."

"State of California }
County of Placer } ss.

Minnie G. Williams, being duly sworn deposes and says that she is now and for ever twenty years past has been a resident of Colfax, California, that she knows H. H. Katz, and knew him

when it was commonly understood that he conducted and managed a house of prostitution in said City of Colfax, in 1909, in Church street, that after the arrest of said H. H. Katz for his ownership of said brothel in 1909, he proceeded within a few weeks thereafter to get possession of a house and lot at the north entrance of said city of Colfax and proceeded to enlarge said house and equip it for prostitution and to establish therein the prostitute, Nellie White whom he formerly had within his house in aforesaid Church Street, and according to general repute continued, until his arrest in 1914, to conduct and manage said house of ill fame at the north entrance to said city of Colfax, that H. H. Katz came regularly and continually from Stockton or Sacramento to Colfax and remained in Colfax several days each month with head-quarters in aforesaid house if ill fame, that the prostitute Nellie White, was commonly described as "Nellie Katz" and as "the Katz woman".

The affiant further avers that it is understood, and, ever since the said H. H. Katz, established said house of prostitution at the north entrance of town it has generally been accepted as a fact by the people of Colfax that the Katz Brothers, H. H. Katz and Joseph Katz, conducted said house of prostitution at the north entrance to town, managing and directing the same, and that no one was ever heard to deny that they conducted and managed the said house of prostitution until they, the Katz Brothers were arrested in 1914.

(Sgd.) MINNIE G. WILLIAMS.

Subscribed and sworn to before me this first day of August, 1914.

MORRIS LOBNER,
Notary Public in and for Placer County, California."

I also wish to call attention to a report of the Committee of Citizens who investigated the matter concerning the Katz Brothers operating a house of prostitution in the City of Colfax, found on page 83 of said record, and which reads as follows:

"Colfax, California, July 26, 1914.

Hon. Secretary of Labor,
Washington, D. C.

Sir:

We, the undersigned citizens of Colfax, wish to protest to you against the efforts made to prevent the deportation of Harry and Joseph Katz, charged with being undesirable aliens and keepers of a house of prostitution in Colfax. We make this protest not because of any feeling of ill-will or malice against these aliens individually, but because we feel that their influence and actions tend to lower the moral tone of the City and because of the baneful influence they have exerted and are exerting upon the youth of this City.

Affidavits have been prepared and furnished by friends of the defendants claiming that they, the defendants, are moral citizens and that they have never been connected with the business of prostitution in this City. We know that these affidavits do not contain the truth because for

years Harry and Joseph Katz have been owning a house of prostitution in this City and it has been a matter of common knowledge that they were profiting by the earnings of prostitutes.

The reason the deportation of these individuals was and is being sought is the fact that they have been ringleaders in the work of prostitution and that we felt the only way in which we could protect our growing youths was to abolish that trade. The appeal to local authorities was vain because of the activity of certain of the men who have signed affidavits in their behalf. Being men with some financial backing and political in standing and connected with the liquor traffic they could wield sufficient influence to prevent justice in the local courts. We felt that the Federal government being uninfluenced by local matters could by the deportation of Harry and Joseph Katz put the seal of official disapproval upon their nefarious traffic and protect the young of our City. That anyone could be found who would testify under oath that Harry and Joseph Katz were not guilty as charged was beyond our belief. Because such have testified we feel it our duty to urge you to listen to the testimony of fathers and mothers who are interested.

We, the undersigned, again affirm our belief in the guilt of Harry and Joseph Katz, and ask that our City be protected from them.

Respectfully submitted,

(Sgd.)

Robert A. Peers, Physician, father of two boys,

Lucy F. Peers, wife of Robert A. Peers,
Morris Lobner, Retired R. R. Agt., father of 2 daughters,
O. E. Williams, merchant, father of 2 daughters, and 1 son,
Grant McMullen, merchant, father of 1 daughter and 1 son,
Geo. Elbert, merchant, father one son,
C. E. Schoonoover, telegrapher, 3 daughters, 1 son,
(Mrs.) Mamie L. Schoonoover, wife of C. E. Schoonoover,
Mary Hanson, Housewife and schooltrustee,
J. Robinson (?) father of one son,
Wm. G. Carter, minister, father of four sons,
Esther V. Carter, mother of four sons,
Emma L. Williams, wife of O. E. Williams,
E. H. Honn, rural mail carrier, father of two daughters and 1 son,
Rosa A. Honn, mother of two daughters and 1 son, wife of E. H. Honn, is a housewife,
W. B. Fowler, hotel keeper, father of one son,
Harvey L. Wolfsen, rancher, father of two daughters and 1 son,
Katie P. Wolfsen, mother of two daughters and 1 son, wife of Harvey L. Wolfsen,
F. G. Irving, rancher, father of one daughter,
Mrs. Mary K. Irving, wife of F. G. Irving,
Minnie G. Williams, bookkeeper, wife of S. K. Williams,
S. K. Williams, lumber merchant,
J. L. Rollins, M. D., father of 8 children,
Eliza Lang Perkins,
Jeannie K. Lobner, wife of Moris Lobner,

Frances E. West, wife of Geo. E. West,
Sadie A. Robinson, mother of one boy."

There are many other affidavits set forth in said Immigration record indicating that the house owned by the said Joseph Katz was well known as a house of prostitution and that the said Joseph Katz was the proprietor of the same. These affidavits are to a large extent based upon information and belief. However, some of them are of a positive nature.

The testimony of Joseph Katz, found on page 23 of said Immigration record, when considered in conjunction with his affidavit found on page 96 of said record, impresses one that he had little respect for the truth of the matters concerning which he was testifying. In his examination by the Immigration officials, beginning on page 23 of said record, he makes no effort to deny that Nellie White, one of the alleged prostitutes, was renting from him, but the lack of knowledge which he professes concerning the character of the business carried on by the said Nellie White and her associates in said building, indicates that he is concealing the truth concerning the matters about which he was being examined.

Counsel representing appellant lays considerable stress upon the case of *Whitfield* vs. *Hanges,* 222 Fed. 475 and *ex parte Lam Fuk Tak,* 217 Fed. Rep. 468, 469. The Government will concede that these cases, and especially the case of *Whitfield* vs. *Hanges* adopts an entirely different view from that established by

the Supreme Court decisions. There has been a tendency on the part of various Circuit Courts of Appeal not to give the Immigration officials the power which the Government contends is vested in them by the Immigration Act and also emphasized by the Supreme Court decisions. Keeping this point in view and with the idea of getting a ruling from this Court concerning the limitations of the Secretary of Labor and his subordinates, as to the character of evidence that should be considered in a deportation proceeding, the Government will now call attention to the cases upon which it relies in support of the action taken by the Secretary of Labor and his subordinates in the present case.

From the very nature of the investigation, the hearings of the executive officers must be of a summary character.

Chin Yow vs. *U. S.*, 208 U. S. 8,
Sibray vs. *U. S.*, 227 Fed. 1,

and their investigations are not subject to the formalities of procedure and rules governing the admissibility of evidence.

Ex parte Garcia, 205 Fed. 53,
Fong Yue Tung vs. *U. S.*, 149 U. S. 698,
U. S. vs. *Hong Chang*, 134 Fed. 19,
Jew Yuen Case, 188 Fed. 350,
Choy Gum vs. *Backus*, 223 Fed. 487,
Siniscalchi vs. *Thomas*, 195 Fed. 701,
Jeung Bow vs. *U. S.*, 228 Fed. 868.

The hearings may be conducted upon affidavits, ex parte depositions and interviews.

Ekiu vs. *U. S.,* 142 U. S. 651,
Low Wah Suey vs. *Backus,* 225 U. S. 460,
Ex parte Garcia, 205 Fed. 53,
White vs. *Gregory,* 213 Fed. 768,
Jeung Bow vs. *U. S.,* supra.
Ex parte Chin Him, 227 Fed. 131,
Ex parte Wong Yee Toon, 227 Fed. 247.

In *Ekiu* vs. *U. S.,* supra, Mr. Justice Gray said:

"An alien immigrant, prevented from landing by any such officer claiming authority to do so under an act of Congress, and thereby restrained of his liberty, is doubtless entitled to a writ of habeas corpus to ascertain whether the restraint is lawful (cases cited) and Congress may, if it sees fit, as in the statutes in question, in *United States* vs. *Jung Ah Lung,* just cited, authorize the courts to investigate and ascertain the facts on which the right to land depends. But on the other hand, the final determination of those facts may be intrusted by Congress to executive officers, and in such case, as in all others, in which a statute gives discretionary power to an officer, to be exercised by him upon his own opinion of such facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by the law to do so, is at liberty to re-examine or controvert the suf-

> ficiency of the evidence on which he acted. *Martin* vs. *Mott,* 25 U. S. Wheat. 19, 31 (6:537, 541); *Phil. & T. R. Co.* vs. *Stimpson,* 39 U. S. 14 Pet. 448, 458 (10: 535, 540); *Benson* vs. *McMahon,* 127 *U. S.,* 457 (32: 234); *Oteiza y Cortes* vs. *Jacobus,* 136 U. S. 330 (34: 464)."

In *ex parte Wong Yee Toon,* supra, in discussing the power of courts to open up a case of Immigration officers, the court said:

> "x x x The latter can interfere only when there is a total failure of all evidence upon which a fair-minded man would feel justified in acting. I certainly cannot find that there is any such lack here. If the question were one upon which it was my duty to pass, I am not prepared to say that I would not reach the same conclusion as that upon which the Secretary of Labor has acted."

In *ex parte Garcia* the alien was charged with violation of the Immigration Act in the same respect as appellee is charged in this case, and the Court, after giving the various questions which arose exhaustive consideration, said with respect to the use of affidavits, the following:

> "Now, to the exact question, whether a trial by affidavits should be considered a 'fair hearing': If the answer be in the affirmative, the writ must be denied; for, as we have already seen, there is no evidence of bad faith, and admittedly, if ex parte affidavits may be con-

sidered, there was before the Secretary ample evidence to justify the issuance of the warrant. So far as I have been able to discover, the specific point is not ruled by any decision of controlling authority; but certain general principles applicable to such hearings have in varying language been repeatedly enunciated. It is well settled that trials of this character are not governed by the rules of criminal procedure. *Fong Yue Ting* vs. *United States,* 149 U. S. 698, 730. 13 Sup. Ct. 1016, 37 L. Ed. 905; *United States* vs. *Hung Chang,* 134 Fed. 19, 25, 67 C. C. A. 93."

In *Lee Lung* vs. *Patterson,* 186 U. S. 168, 176, 22 Sup. Ct. 795, 797 (46 L. Ed. 1108), the Supreme Court said:

> 'But jurisdiction is given to the Collector over the right of the alien to land, and necessarily jurisdiction is given to pass on the evidence presented to establish that right. He may determine the validity of the evidence, or receive testimony to controvert it, and we cannot assent to the proposition that an officer or tribunal, invested with jurisdiction of a matter, loses that jurisdiction by not giving sufficient weight to evidence, or by rejecting proper evidence, or by admitting that which is improper.' "

Counsel for appellant sets forth in his brief the affidavit of George W. Hamilton and seems to lay particular stress upon this affidavit in support of the

contention set forth in this brief, but in answer to this, the Government desires to call attention to the affidavit of Lucy F. Peers, found on page 77 of the original record of the Bureau of Immigration, and also the affidavit of Jeannie K. Lobner, found on page 78 of said record. These two affidavits will throw considerable light upon the interest which the said George W. Hamilton has shown in behalf of the Katz Brothers.

It will be noted that counsel for appellant has set forth on page 24 of the transcript the opinion and order over-ruling the demurrer in the Harry Katz case. That opinion and order has nothing whatever to do with this case and at the time that the lower Court rendered its opinion in the case under consideration, it did not only take into consideration the admitted fact that Joseph Katz was the owner of the building in which prostitution was being carried on and accepted the rental from said prostitutes, but also the various affidavits to which attention has been called in this brief. These indicate that the said Joseph Katz took a far more active part than a mere landlord would ordinarily take in the collection of his rentals.

The lower Court, in sustaining the Government's demurrer to the petition for a writ of habeas corpus in the present case, evidently considered that there was sufficient evidence to justify the execution of the order of deportation of the Secretary of Labor, and the Government now takes the position that under the

Immigration Act in question and the decisions handed down, not only by many of the United States Circuit Courts of Appeal, but also by the Supreme Court, that there was ample justification for the lower Court's opinion and order.

Respectfully submitted,

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